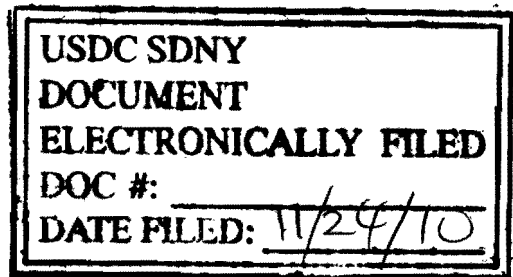


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
: IN RE WORLD TRADE CENTER DISASTER SITE
: LITIGATION
:

ORDER APPOINTING
SPECIAL COUNSEL

----- :
: IN RE LOWER MANHATTAN DISASTER SITE
: LITIGATION
:

21 MC 100 (AKH)

21 MC 102

21 MC 103

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: IN RE COMBINED WORLD TRADE CENTER
: DISASTER SITE AND LOWER MANHATTAN
: DISASTER SITE LITIGATION
:
: x

ALVIN K. HELLERSTEIN, U.S.D.J.:

Last Friday, the Allocation Neutral reported that 10,043 Eligible Plaintiffs have opted to settle their lawsuits, representing 95.1 percent of all Eligible Plaintiffs. Among these are 5,308 Tier 4 Eligible Plaintiffs, those who claim the most serious injuries from causes most closely related to the events of September 11, 2001. The rate of acceptance, which exceeds the thresholds set by the Settlement Process Agreement, As Amended ("SPA"), is truly extraordinary. By endorsement order, I accepted and approved the report of the Allocation Neutral, certifying that the thresholds were satisfied.

There are 520 Eligible Plaintiffs who have not opted into the SPA. Of this number, 93 Eligible Plaintiffs could not be located despite diligent efforts, and 135 Eligible Plaintiffs have declined to communicate with their counsel, Worby Groner Edelman & Napoli Bern. These two groups, 228 in total, represent 44 percent of the Eligible Plaintiffs who did not opt into the SPA, and could yield additional opt-ins if they were to decide to opt into the SPA and if the WTC Captive Insurance Company ("WTC Captive") would agree to accept them, as

§ VI.B of the SPA permits it to do and as it is likely to do. If, conversely, members of this group continue to be unreachable, or persist in declining to cooperate with counsel, those members will have failed to prosecute their cases, warranting dismissals with prejudice pursuant to Federal Rule of Civil Procedure 41(b). Under the SPA, an Eligible Plaintiff who is dismissed with prejudice is stricken from the Eligible Plaintiff List. This analysis suggests that the rates of settlement are even greater than appears from the report of the Allocation Neutral.

There are additional subgroups that lend themselves to further examination. Approximately 45 Eligible Plaintiffs, I am advised, have expressed their desire to opt into the SPA but have not yet completed the necessary paperwork. Acceptance by the WTC Captive of this subgroup also will increase the percentage of those choosing to settle.

Further, there are additional Eligible Plaintiffs, perhaps more than 50, who have expressed a desire to withdraw from the lawsuit and who remain on the Eligible Plaintiff List, and there are an additional 99 Eligible Plaintiffs whose expressed desires have led to the filing of stipulations of dismissal with prejudice, and whose names consequently were removed from the Eligible Plaintiff List pursuant to § VI.A. of the SPA.

I have supervised these cases, and the settlement procedures that promise to resolve them, in the interest of justice and with the pursuit of justice ever paramount. In mass tort litigation, procedures that produce fairness for a group of litigants may not always be fair to individual litigants. Effective and efficient litigation by plaintiffs' lawyers require the aggregation of the interests of numerous plaintiffs, often frustrating individual plaintiffs who seek advice and comfort in their individual cases. Lawyers who represent the group may have clients who favor a settlement and clients who prefer not to settle, or who grow tired of litigation and wish to withdraw from the travail. This and other considerations can cause frustration and

interfere with clients needs for a calm, deliberate evaluation of their best interests. These phenomena are present in all mass tort litigations, and appear to be present here as well, in this unique, emotional, and very public aftermath of the terrorist-related aircraft crashes, fires and destruction of the World Trade Center and its surroundings.

It is not surprising that a relatively small number of Eligible Plaintiffs have become frustrated by the litigation and settlement processes and have made themselves difficult to locate, unwilling to communicate, and desirous of quitting. There is a special proceeding available to the Court to treat such a set of problems, for it is evident that every litigant affected by this Order should have equal opportunity to evaluate his or her rights and interests and, with the help of disinterested Special Counsel, to arrive at an informed decision of his or her best interests.

The procedure I hereby order, after consultation with all counsel and with their encouragement and mutual agreement, is the appointment of a Special Counsel to the several subgroups of Eligible Plaintiffs who have not opted into the SPA. Special Counsel shall make himself, and the attorneys and paralegals of his law firm, available to these subgroups, to assist them in such reviews as they wish to conduct, and to arrive at a decision in their best interests. Special Counsel shall perform these services from now until December 17, 2010. His services shall then end. He may not continue as counsel for any of the Plaintiffs in the 9/11 lawsuits.

Having full faith and confidence in Michael Hoenig, Esq., of Herzfeld & Rubin, P.C., I appoint him, his law firm, and such attorneys and paralegals in his law firm as he shall wish to assist him. Mr. Hoenig can be reached by email at mhoenig@herzfeld-rubin.com, and by phone at (212) 471-8500. Herzfeld & Rubin's mailing address is 125 Broad Street, New York, NY 10004.

The several Plaintiffs' law firms shall provide such assistance, and access to their records, as Special Counsel shall require, and Special Counsel and Plaintiffs' law firms shall have joint entitlement to attorney-client and work product privileges. Special Counsel shall bill, according to the time devoted to the matter, at the rate of \$325 - \$450 per hour for attorneys, and \$125 per hour for paralegal service, plus expenses. Plaintiffs' liaison counsel, Worby Groner Edelman & Napoli Bern, have agreed to pay Special Counsel's fees and expenses out of the fees they will be receiving in these lawsuits, on behalf of themselves for their clients who are or may be affected, and on behalf of other Plaintiffs' counsel for their clients who are or may be affected, proportionately to the number of such clients.

Special Counsel will not be required to report to the Court, except as may be convenient to his work. The goal of his services is to assist such of the Eligible Plaintiffs as desire his services to come to one of four possible decisions, on the basis of full and fair disclosure of all the benefits and detriments of each choice, and to make proper declaration of such choice:

1. Opt into the SPA, executing all necessary documentation;
2. Declare a choice to continue with the lawsuit;
3. Choose not to participate further in the litigation, either by declaration or by declining to exercise any other choice, or declining to meet with Special Counsel; or
4. Instruct counsel to proceed with a dismissal-with-prejudice procedure.


The dismissal with prejudice mentioned in Paragraphs 3 and 4 above shall be in the form previously filed in this litigation, which is attached to this Order. See Order, 05 Civ.

1578 (21 MC 100), Doc. No. 9 (S.D.N.Y. Feb. 22, 2010). All previously filed stipulations will be subject to an order conforming their provisions to the Order of February 22, 2010.

SO ORDERED.

Dated:

November 24, 2010
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
IN RE WORLD TRADE CENTER DISASTER :
SITE LITIGATION :

JOHN DUNNE,

Plaintiff,

-against-

WORLD TRADE CENTER PROPERTIES,
LLC., et al.

Defendants.

JAMES F. ALBACH

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.

DANIEL TAYLOR, et al.

Plaintiffs,

-against-

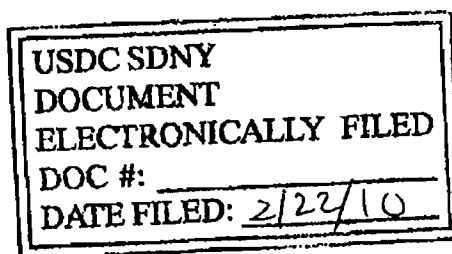
THE CITY OF NEW YORK, et al.

Defendants.
----- X

ALVIN K. HELLERSTEIN, U.S.D.J.:

ORDER

21 MC 100 (AKH)
05 Civ. 1578 (AKH)
05 Civ. 1582 (AKH)
08 Civ. 9046 (AKH)



On January 15, 2010, the parties filed a joint letter under my Individual Rule 2E advising me that three plaintiffs wished to file voluntary stipulations of dismissal, but the parties could not agree on whether those dismissals would be with or without prejudice.

On January 20, 2010, I ruled that the disagreement precluded the filing of stipulations and that to obtain the relief plaintiffs requested, they must make a proper motion. On February 3, 2010, the plaintiffs moved under Rule 41(a)(2) of the Federal Rules of Civil Procedure for an order dismissing the action under terms the court considers proper, requesting that the dismissals be without prejudice.

I grant plaintiffs' motion for voluntary dismissal. The dismissal is with prejudice for all claims that could have been brought in relation to plaintiffs' existing pleadings, but without prejudice in relation to a second injury to the extent permitted by New York State law, see, e.g., Golod v. Hoffman La Roche, 964 F. Supp. 841 (S.D.N.Y. 1997) ("Under [New York's] two-injury rule, "diseases that share a common cause may nonetheless be held separate and distinct where their biological manifestations are different and where the presence of one is not necessarily a predicate for the other's development." (internal quotation marks omitted)), and as may be defined by any court having jurisdiction over any such later-filed complaint. The dismissal is without costs.

The clerk shall mark the motion (Doc No. 1726) as terminated and the individual cases as closed.

SO ORDERED.

Dated: New York, New York
February 22, 2010


ALVIN K. HELLERSTEIN
United States District Judge